

The JS - 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings of other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I.(a) PLAINTIFFS

Tijuana Johnson, on behalf of herself and other persons similarly situated

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Camden County, NJ  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

Michael A. Galpern, Esquire  
Locks Law Firm, LLC  
457 Haddonfield Road, Suite 500  
Cherry Hill, NJ 08002  
Phone: 856-663-8200

DEFENDANTS

Wynn's Extended Care, Inc. and National Casualty Company

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Miami-Dade, FL  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

Kevin M. McKeon, Esquire  
Marshall, Dennehey, Warner, Coleman & Goggin  
200 Lake Drive East, Suite 300, Cherry Hill, NJ 08002  
Phone: 856-414-6000

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of this State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/>   | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment  <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)  <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<div>PERSONAL INJURY</div> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <div>PERSONAL INJURY</div> <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal - Injury Product Liability  <div>PERSONAL PROPERTY</div> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <div>LABOR</div> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <div>PROPERTY RIGHTS</div> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <div>SOCIAL SECURITY</div> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <div>FEDERAL TAX SUITS</div> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation  <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange  <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Arts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act  <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- Transferred from
- ☐ 5 another district (specify)
- ☐ 6 Multidistrict Litigation
- Appeal to District Judge from
- ☐ 7 Magistrate Judgment

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq.

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23  
☐ Declaratory Relief

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND ☒ YES ☐ NO

VIII. RELATED CASE(S) (See instructions) IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

January 4, 2012

/s/ Kevin M. McKeon

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
(Camden Vicinage)**

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TIJUANA JOHNSON, on behalf of herself  
and other persons similarly situated

Plaintiffs,

v.

WYNN'S EXTENDED CARE, INC., &  
NATIONAL CASUALTY COMPANY

Defendants.

Case No.

Class Action

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**NOTICE OF REMOVAL OF DEFENDANTS,  
WYNN'S EXTENDED CARE, INC. & NATIONAL CASUALTY COMPANY**

**TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

**PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, as amended by the Class Action Fairness Act of 2005, Defendants Wynn's Extended Care, Inc. & National Casualty Company ("Defendants") hereby remove the above-captioned action entitled Tijuana Johnson, on behalf of herself and other persons similarly situated v. Wynn's Extended Care, Inc. & National Casualty Company, No. L-5698-11 from the Superior Court of New Jersey, Camden County, to the United States District Court for the District of New Jersey. As grounds for removal to this Court, Defendants state as follows:

**FACTUAL BACKGROUND**

1. On November 15, 2011, Tijuana Johnson ("Plaintiff") commenced this action in the Superior Court of New Jersey, Camden County, Case No. L-5698-11.

2. Plaintiff served Defendants with a copy of the Summons and Complaint on December 6, 2011. *True and correct copies of the Summons, Complaint, and all other process, pleadings, and orders served on Defendants in this action are attached as Exhibit "A". See 28 U.S.C. § 1446(a).*

3. Defendant Wynn's Extended Care, Inc. is a corporation organized and existing under the laws of the State of California with its principal place of business in Miami, Florida. Accordingly, Wynn's Extended Care, Inc. is a citizen of both California and Florida for purposes of 28 U.S.C. § 1332 and 28 U.S.C. § 1441. *See 28 U.S.C. § 1332(c)(1).*

4. Defendant National Casualty Company is a corporation organized and existing under the laws of Arizona with its principal place of business in Scottsdale, Arizona. (*See Exhibit "A" at ¶ 3*). Accordingly, National Casualty Company is a citizen of Arizona for purposes of 28 U.S.C. § 1332 and 28 U.S.C. § 1453. *See 28 U.S.C. § 1332(c)(1).*

#### **PLAINTIFF'S CLASS ALLEGATIONS**

5. Plaintiff alleges that Defendants "offer, display, market, and sell vehicle service contracts, through a network of dealers and agents to New Jersey consumers" and participated in "unconscionable business practices" in violation of "the New Jersey Consumer Fraud Act (CFA), the New Jersey Truth in Consumer Contract, Warranty and Notice Act (TCCWNA), and the New Jersey Plain Language Act (PLA)." *See Exhibit "A" at ¶ 1-4.*

6. In particular, Plaintiff claims that Defendants violated the aforesaid consumer protection statutes by "requiring consumers to sign form contracts (1) containing hidden and/or unreadable arbitration provisions which violate the aforesaid

consumer protection statutes; (2) requiring consumers to pay their own attorneys fees and costs in any dispute in violation of the CFA and TCCWNA; (3) requiring consumers to pay prohibitively excessive costs and fees that discourage and/or prohibit consumers from prosecuting any claims and/or disputes against Defendants; (4) extinguishing consumers' right to a jury trial without adequate and/or proper notice; (5) requiring that the arbitration take place in Orange County California before a panel of three arbitrators pursuant to unknown rules and/or procedures; and, (6) prohibiting an award of punitive damages." *See Exhibit "A" at ¶ 2.*

7. Plaintiff seeks to pursue this potential proffered class action on behalf of one class and one subclass, as follows:

a. A class of "all persons, who since February 12, 2005 (or such date as discovery may disclose) to whom form contracts, the preprinted portions of which were identical or substantially similar to the UVSC [Used Vehicle Service Contract] (Attachment A) have been offered, displayed, given or signed in New Jersey presented by or on behalf of Defendants or their agents." *See Exhibit "A" at ¶ 26.*

b. A subclass of "all persons within the Class who, having suffered a "Covered Breakdown", as defined in the UVSC, had their claim to Defendants denied, in part or in whole." *See Exhibit "A" at ¶ 27.*

8. Plaintiff further avers that "during the relevant time period, well over 500 persons were offered or signed the documents of the type offered to the Plaintiff and offered and issued by Defendants or their agents." *See Exhibit "A" at ¶ 29.*

**FEDERAL JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT**

9. **Application of CAFA.** This Court has jurisdiction of this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”), Public Law 109-2 codified at 28 U.S.C. § 1332(d).

10. CAFA creates federal jurisdiction over lawsuits in which the “matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs,...is a class action in which ... any member of a class of plaintiffs is a citizen of a State different from any defendant” and involves a putative class that consists of more than 100 members. 28 U.S.C. §§ 1332(d)(2)(A) and (d)(5).

11. Each of these three requirements is met.

12. **Requirement No. 1: The Plaintiff is a Citizen of a State Different From Defendants.** Plaintiff is a citizen of New Jersey. (See *Exhibit "A" at ¶ 1 and 25*).

13. Defendant Wynn's Extended Care, Inc. is a citizen of California and Florida for purposes of CAFA. See 28 U.S.C. § 1332(c)(1).

14. Defendant National Casualty Company is a citizen of Arizona for purposes of CAFA. See 28 U.S.C. § 1332(c)(1).

15. Accordingly, this action is a class action where “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A) (emphasis added).

16. Minimum diversity is, therefore, satisfied.

17. **Requirement No. 2: The Class Consists of Well Over 100 Class Members.** Plaintiff alleges that "during the relevant time period, well over 500

persons were offered or signed the documents of the type offered to the Plaintiff and offered and issued by Defendants or their agents." *See Exhibit "A" at ¶ 29.*

18. Furthermore, plaintiff's contention that the Class consists of "well over 500 persons" is extremely modest if one is to accept plaintiff's defined class as "all persons who, since February 12, 2005 . . . **have been offered, displayed, given or signed**" a Used Vehicle Service Contract in the State of New Jersey "by or on behalf of Defendants" that is identical or substantially similar to the Used Vehicle Service Contract sold to the plaintiff. *See Exhibit "A" at ¶ 26.* (emphasis added).

19. Therefore, the requirement that the putative class consist of more than 100 members is satisfied.

20. **Requirement No. 3: The Amount in Controversy Exceeds \$5,000,000.** Defendants dispute Plaintiff's claims and will contest any motion seeking class certification. However, Plaintiff's allegations in the Complaint demonstrate that the Complaint seeks in excess of \$5,000,000, exclusive of interest and costs, and therefore satisfies the amount in controversy requirement.

21. As set forth above, Plaintiff seeks to pursue this action on behalf of all individuals who, since February 12, 2005, "have been offered, displayed, given or signed" a Used Vehicle Service Contract in the State of New Jersey "by or on behalf of Defendants" that is identical or substantially similar to the Used Vehicle Service Contract sold to the plaintiff. *See Exhibit "A" at ¶ 26.* (emphasis added).

22. Thus, Plaintiff's purported class would include not only New Jersey consumers who purchased one of Defendants' Used Vehicle Service Contracts since February 12, 2005, but all consumers who were "offered, displayed or given" the option to purchase one of Defendants' Used Vehicle Service Contracts, "by or on behalf of

Defendants", regardless of whether such consumers eventually purchased one of Defendants' Service Contracts.

23. Since February 12, 2005, Defendants have sold and offered Used Vehicle Service Contracts to consumers through at least one-hundred ten (110) automotive dealerships in the State of New Jersey. *See Affidavit of Paul F. Guelmes, attached hereto as Exhibit "B"*.

24. Since February 12, 2005, Defendants have sold over ten-thousand (10,000) Used Vehicle Service Contracts, identical or substantially similar to the Used Vehicle Service Contract sold to the plaintiff, to consumers in the State of New Jersey. *See Affidavit of Paul F. Guelmes, attached hereto as Exhibit "B"*.

25. As set forth above, Plaintiff has alleged claims under the New Jersey Consumer Fraud Act, the New Jersey Truth in Consumer Contract, Warranty and Notice Act, and the New Jersey Plain Language Act. *See Exhibit "A"*.

26. Pursuant to these claims, Plaintiff seeks the following forms of relief for herself and the putative class:

- a. a minimum statutory penalty of \$100.00 per class member;
- b. preliminary and permanent injunctive relief;
- b. actual and compensatory damages, including treble damages;
- c. punitive and exemplary damages; and
- d. attorneys fees and costs.

27. In addition to compensatory damages, it is appropriate to consider Plaintiff's request for treble damages, punitive damages and attorney's fees. Fluke v. Cash Call, Inc., 2009 U.S. Dist. LEXIS 18847 (E.D. Pa. March 10, 2009); Kaufman v.

Allstate N.J. Ins. Co., 561 F.2d 144 (3d. Cir. 2009); Packard v. Provident Nat'l. Bank, 994 F.2d 1039 (3d. Cir. 1993).

28. Plaintiff's allegations concerning the thousands of people they will claim are allegedly in the putative class, the numerous forms of relief that Plaintiff seeks on behalf of that putative class, and the other information set forth above, clearly demonstrate that the amount of damages Plaintiff is seeking exceeds \$5,000,000, exclusive of interest and costs.

29. Plaintiff seeks a minimum statutory penalty of \$100.00, trebled, for each of the at least 10,000 aforementioned consumers who purchased used vehicle service contracts from the Defendants since February 12, 2005 (or \$3,000,000), plus additional trebled actual and compensatory damages for such purchasers, plus punitive damages, plus attorney's fees.

30. **In addition**, plaintiff seeks trebled actual and compensatory damages, punitive damages, and attorney's fees for each of the countless consumers who were simply **offered, displayed or given** one of Defendant's identical or substantially similar used vehicle service contracts over the past nearly seven (7) years, but did not necessarily purchase one.

31. Thus, even the most conservative computation of damages that Plaintiff is seeking overwhelmingly exceeds \$5,000,000, exclusive of interest and costs.

### **PROCEDURAL MATTERS**

32. **Removal is Timely.** This Notice of Removal is timely because it is being filed within 30 days after Defendants received, through service or otherwise, a copy of Plaintiff's Complaint. *See* 28 U.S.C. § 1446(b).



33. **Consent to Removal.** The Class Action Fairness Act of 2005 does not require all defendants to consent to removal. *See* 28 U.S.C. § 1453(b).

34. **Removal to Proper Court.** This Court is the appropriate court to which the action must be removed because it is part of the “district and division embracing the place where” Plaintiff filed this action in the Superior Court of New Jersey, Camden County. *See* 28 U.S.C. § 1446(a).

35. **Filing and Service.** Written notice of this Notice of Removal will be given to Plaintiff promptly after the filing of the Notice of Removal as required by 28 U.S.C. § 1446(d). In addition, as required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be filed promptly in the State Court Action with the Clerk of the Court of the Superior Court of New Jersey, Camden County after the filing of the Notice of Removal.

**WHEREFORE**, Defendants, Wynn's Extended Care, Inc. & National Casualty Company, hereby respectfully removes this action from the Superior Court of New Jersey, Camden County, to the United States District Court for the District of New Jersey.

**MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN**

By: /s/ Kevin M. McKeon  
Kevin M. McKeon  
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Dated: 1/5/12